



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/540,285	02/06/2006	Andre Wichelhaus	P400556	8277

7590 04/14/2008
Alexander R Schlee
Viering Jentschura & Partners
3770 Highland Ave
Suite 203
Manhattan Beach, CA 90266

EXAMINER

WALKER, NED ANDREW

ART UNIT	PAPER NUMBER
----------	--------------

3781

MAIL DATE	DELIVERY MODE
-----------	---------------

04/14/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/540,285	Applicant(s) WICHELHAUS, ANDRE	
	Examiner NED A. WALKER	Art Unit 3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 June 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>6/20/2005; 8/18/2005; 2/15/2007; 3/3/2008</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

1. In response to the Preliminary Amendment filed on January 18th, 2005, comprising amendments to the specification including the claims. Claims 1-5 have been cancelled and claims 6-16 are pending.

Drawings

2. New corrected drawings in compliance with 37 CFR 1.84 and 37 CFR 1.121 are required in this application because:

The drawings must be reasonably free from erasures and must be free from alterations, overwriting, interlineations, folds, and copy marks. Refer to 37 CFR 1.84(e). See Figure(s) 1-9.

The drawings contain improper sectional views and/or sectional view references. The plane upon which a sectional view is taken should be indicated on the view from which the section is cut by a broken line. The ends of the broken line should be designated by Arabic or Roman numerals corresponding to the view number of the sectional view, and should have arrows to indicate the direction of sight. Hatching must be used to indicate section portions of an object, and must be made by regularly spaced oblique parallel lines spaced sufficiently apart to enable the lines to be distinguished without difficulty. Refer to 37 CFR 1.84(h(3)). See Figure(s) 4.

The drawing sheet numbering is formatted improperly. The drawing sheet numbering must be clear and larger than the numbers used as reference characters to avoid confusion. Refer to 37 CFR 1.84(t). See drawing pages 1-5.

3. Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

Specification

4. The disclosure is objected to because of the following informalities:

The arrangement of the specification does not meet the guidelines set forth in 37 CFR 1.77(b). The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

Arrangement of the Specification

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT.
- (e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC.
- (f) BACKGROUND OF THE INVENTION.
 - (1) Field of the Invention.
 - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (g) BRIEF SUMMARY OF THE INVENTION.
- (h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (i) DETAILED DESCRIPTION OF THE INVENTION.
- (j) CLAIM OR CLAIMS (commencing on a separate sheet).
- (k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).

(I) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

The specification provided is a poor photocopy containing copy marks. Please submit a clean copy. Appropriate correction is required.

The spacing of the lines of the specification is such as to make reading difficult. New application papers with lines 1½ or double spaced on good quality paper are required.

The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed. The title should include at least one technical or inventive feature set forth in the application.

Claim Objections

5. The claims are objected to because the lines are crowded too closely together, making reading difficult. Substitute claims with lines one and one-half or double spaced on good quality paper are required. See 37 CFR 1.52(b).

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 1-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, pg. 2 lines 9-15 the use of “reinforcing bead” and “annular bead” is ambiguous. Correction providing distinction between the beads and bead references is required for clarity.

Claim 11 recites the limitation "bulge rib" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Regarding claims 20-21, the preambles of both claims recite “drinks can” which is improper idiomatic English. Appropriate correction is required.

Claims 2-21 are further rejected for incorporating the above errors within their respective parent claim by dependency.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. Claims 1-17, 19, and 20 are rejected under 35 U.S.C. 103(a) as being obvious over Wilson (US Pat. No. 4,442,950) in view of Brown (US Pat. No. 4,024,981).

Regarding claims 1 and 20, Wilson teaches a lid (figures 1-3) for a container (C), in particular for a drinks can, with said lid having a lid plate (10), in which a breakout portion (20) is formed, and an opener tab (12), which is provided with a pressing portion (50) and a gripping portion (52) and also with a fastening tongue (54), which is arranged in a cutout of the opener tab and has a foot (60) formed onto the pressing portion and with which the opener tab is pivotably fastened at a fastening stud (14) of the lid plate next to the breakout portion, which can be pressed down and thereby broken out in an opener pivoted position of the opener tab by the pressing portion by means of lifting the gripping portion (figure 5), so that in the lid plate there is produced an opening (22) which is bounded by a bounding rim (32) and can be re-closed in a closure pivoted position of the opener tab (figures 5-7) by a closure attachment, which, by means of a depression (64) being formed into the gripping portion protrudes on the underside of the gripping portion at an angle from a covering collar (74), wherein the fastening tongue is formed in an elongated manner and has between its foot and the fastening stud a twisting portion, and the closure attachment is formed in a flat manner and has adjoining the covering collar a surrounding surface which corresponds in its outline to the opening (figure 8), so that the gripping portion can be pressed down in the closure pivoted position of the opener tab into a closed position, in which the closure attachment engages in the opening substantially to the extent that the covering collar rests on the bounding rim of the opening (figure 8), a receiving depression (38) being formed into the

upper side of the lid plate for receiving said closure attachment in the opener pivoted position of the opener tab (figure 1, column 3 lines 17-27), so that a protruding formation is formed on the underside of the plate (figure 2).

Wilson does not disclose that the bounding rim of the opening is bounded by a reinforcing annular bead formed as a depression into the upper side of the lid plate and a reinforcing bead is formed as a depression into the upper side of the lid plate on each of both sides of the fastening stud and opens out into the annular bead and ends at the protruding formation formed by the receiving depression.

Brown teaches a bounding rim of an opening is bounded by a reinforcing annular bead (60) formed as a depression into the upper side of the lid plate (12) and a reinforcing bead (61, 62) is formed as a depression into the upper side of the lid plate on each of both sides of a fastening stud (27) and opens out into the annular bead and ends at the protruding formation formed by a receiving depression (35).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to strengthen the lid by utilizing the bead structure taught by Brown on the lid disclosed by Wilson. The strength of the bead structure would provide for increased rigidity which would allow for easier opening of the breakout portion as well as increased rigidity for the stud or rivet and its surrounding structure. Using beads within a lid structure in order to increase rigidity and facilitate the breaking of a score line is old and well known within the art.

Regarding claim 2, Wilson teaches that the fastening tongue is protruding with its foot beyond the rim portion of the breakout portion alongside the fastening stud in the opener pivoted position of the opener tab (figure 1).

Regarding claim 3, Wilson teaches the opening extending significantly on both sides beyond the pressing portion of the opener tab in the opener position of the latter (figure 5) and the opener tab widening steadily from its pressing portion to its gripping portion (figure 4).

Regarding claim 4, one of ordinary skill in the art would glean from Wilson that the side of the opening that is alongside the fastening stud runs along a straight line because one of ordinary skill would know that the breakout portion detaches in the score line up to two points on either side of the opening at the rivet end and then folds in the form of a straight line between these points.

Regarding claim 5, Wilson teaches the opener tab (14) extending at a distance from the lid plate (11) and there being formed between the foot (35) of the fastening tongue (16) and the twisting portion (16a) of the latter a foot portion (35a) that is set at an angle to said twisting portion and the pressing portion (figures 1, 5-7, and 9).

Regarding claim 6, Wilson teaches the receiving depression has a larger outline than the outline of the covering collar of the closure attachment and the protruding formation includes a shoulder reinforcing the lid plate in the peripheral region of the fastening stud (figures 2, 8).

Regarding claim 7, Wilson teaches the fastening stud of the lid plate being arranged at a distance from the opening that corresponds at least to the diameter of the fastening stud (figure 8).

Regarding claim 8, Wilson teaches wherein the underside of the covering collar has a coating of compliant rubber material or plastics material for providing a sealing effect in interaction with the bounding rim of the opening in the closure position of the opener tab (column 3 lines 60-66).

Regarding claim 9, Wilson teaches the pressing portion of the opener tab being reinforced in the region of its free end by a central bead (72).

Regarding claim 10, Wilson teaches the delimiting rim of the pressing portion of the opener tab being reinforced by a reinforcing bulge (78) up to its gripping portion.

Regarding claim 11, Wilson teaches the portions of the bulge rib running on both sides of the cutout being extended into the reinforcing bulge (figures 2, 4).

Regarding claim 12, Wilson teaches the pressing portion of the opener tab being reinforced by a bulge rib (29) along the foot (35) of the fastening tongue and on both sides of the same along the cutout (figures 2, 4).

Regarding claim 13, Wilson teaches latching projections that interact in a latching manner with the bounding rim of the opening being formed on the surrounding surface (19) of the closure attachment (column 3 lines 50 – column 4 line 15, figures 8-9).

Regarding claim 14, Wilson teaches a finger clearance being formed in the lid plate on the side of the opening remote from the fastening stud and protruding beyond

the covering collar of the gripping portion in the closure pivoted position of the opener tab (figures 5-6).

Regarding claim 15, Wilson teaches a finger clearance being formed in the lid plate on the side of the gripping portion remote from the fastening stud in the opener pivoted position of the opener tab (figures 5-6).

Regarding claim 16, Wilson teaches the closure attachment being formed as a peripheral bulge (figure 2).

Regarding claim 17, Wilson teaches the closure attachment being formed as a plateau-like elevation (figures 2, 4).

Regarding claim 19, Wilson teaches the fastening tongue of the opener tab being formed as a spring tongue, by which the closure attachment of the opener tab is resiliently pressed against the lid plate (figures 5-6).

11. Claims 18 and 21 are rejected under 35 U.S.C. 103(a) as being obvious over Wilson (US Pat. No. 4,442,950) in view of Brown (US Pat. No. 4,024,981) further in view of Westwood et al. (US Pat. No. 6,059,137).

Wilson teaches a lid where the lid plate (10) has a protruding rim flange (figure 2), but does not disclose a rim flange which rises some distance above the opener tab, and said lid having an axial annular flange being provided at the lower end of the container, radially at a distance from its peripheral body and with an axial length which is less than the distance by which the protruding rim flange of the lid plate rises above the opener tab.

Westwood et al. teaches a rim flange which rises some distance above the opener tab, and said lid having an axial annular flange being provided at the lower end of the container, radially at a distance from its peripheral body and with an axial length which is less than the distance by which the protruding rim flange of the lid plate rises above the opener tab (figures 1 and 8B) for the purpose of stacking the containers.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use container with the rim structure taught by Westwood et al. so that the cans can be stacked. This rim structure for the purpose of stacking is old and well known within the art.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to NED A. WALKER whose telephone number is (571)270-3545. The examiner can normally be reached on Monday - Friday 7:30 AM - 5:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

NW

/Anthony D Stashick/
Anthony Stashick
Supervisory Patent Examiner, Art Unit 3781